

30 November 2021

Mr Steven Avery
Executive Director
Heritage Victoria
DELWP

Re: Permit Application P34800
Catani Gardens, St Kilda (VHR H1805)

This letter has been prepared on behalf of Parks Victoria in relation to the permit application to establish a temporary works compound in the southern end of the Catani Gardens for use during the redevelopment of the St Kilda pier. Heritage Victoria have expressed a number of concerns arising from the application and have requested additional information, as listed and addressed below.

It is intended that this letter be read in conjunction with the following documents:

- Revised architectural documentation by Jackson Clements Burrows/Site Office Landscape Architecture, including an updated demolition plan and construction works compound layout.
- *St Kilda Pier Foreshore Works Arboricultural Conservation Impact/Tree Protection Report* (Greenwood Consulting Pty Ltd, 7 October 2021)
- *Biodiversity Assessment for St Kilda Pier – Pier Entry Works* (Ecology & Heritage Partners Pty Ltd, June 2021)
- City of Port Phillip '*Footpath Pavement Asphalt*' Drawing No. CPP1301, Rev A.

Response to RFI

- *Detailed information on the layout and use of the Catani Gardens portion of the proposed works compound including information on the removal of any landscape elements, and information on any structures and storage of elements that will be placed within that area during the period of time that the compound is proposed to be in place, and information on any land side staging processes that will impact the Gardens*

A revised compound layout has been prepared with input from the contractor. Inter alia, the revised plan shows the location of site offices, amenities blocks and the like, and also has the temporary bay trail re-routed to the compound perimeter, utilising for the most part the existing path network, and also taking into account the arborists recommendations on the extent to which the paths can intrude into the Tree Protection Zones. The temporary path will require a line marked asphalt surface, mostly over existing gravel paths with some widening of the path required to comply with City of Port Phillip standards. New paths generally come no closer to registered trees than existing paths. The gravel paths will be reinstated to match existing after removal of the construction compound, noting that the gravel is not original or early and has no historic edging treatment.

In respect to the removal of landscape elements, and as already described in the HIS, all hard landscape elements proposed for removal are modern – including rubbish bins, park benches, bollards, fencing, lighting, traffic signage etc. These hard landscape items are not listed in the extent of registration, nor do they contribute in any sense to the identified significance of the gardens or otherwise reflect its historical appearance. The potential for these hard landscape items, including gravel paths, to be damaged in the course of removal gives rise to no heritage concerns whatsoever. Like for like replacement of modern fabric of this kind is within the parameters of works that would normally be permit exempt.

The small garden bed adjacent to the Mirka Mora sculpture is to be taken up, but this is a fairly recent item that also intrudes into the original Pier Road alignment. It has a native garden character that does not contribute in any way to the significance of Catani Gardens. Moreover, permanent removal of the garden bed is required to allow for the now proposed reinstatement of the original Pier Road alignment.

It is a key consideration that no established trees are to be removed from within the extent of registration. Several banksia trees are proposed for removal but they all sit outside of the extent of registration and are identified as having low retention value in the arborist's report.

The updated arborist's report provided with this letter was prepared with regard for a now superseded plan for the construction compound and temporary bike path route, but the recommendations for the protection of specific trees are to be implemented and can form the basis for permit conditions (refer pp.14, 20-25, and Appendix 1 to the arborist's report).

The RFI raises the potential for 'substantial' damage to lawns and paths. It is proposed that lawns within the construction compound be covered in crushed rock to provide a stable/all-weather surface. The affected lawns would need to be re-established after the construction compound is removed, but this would not be an unusual occurrence in the process of maintaining other public parks and gardens on the Register.

The damage to existing paths and lawns will not have any long-term impact on the significance of the Catani Gardens. The potential for adverse impacts on the Gardens can be mitigated by permit conditions requiring the reinstatement of lawns and paths to match. This would be undertaken as a part of the expanded scope of works to reinstate the original 'squared off' section of the gardens including new lawns and the extension of the shortened radial path (as discussed below).

- *A confirmation that the proposed final size and configuration of the entire works compound will be fit for purpose and that additional landscaped area in the Gardens will not be required to be incorporated into the compound.*

The revised layout and configuration of the works compound plan has been prepared with direct input from the contractor to help ensure optimal conditions. Regardless of this, it is difficult to predict with absolute certainty that no further changes to the layout of the construction compound works will need to occur, taking into account the scale and complexity of the St Kilda pier redevelopment. The impacts of any proposed change to approved works can be assessed in the event of an application to amend the permit.

- *Additional explanation as to why less sensitive areas such as a greater extent of Pier Road and/or some extent of the car park have not been included in the compound area for some uses to lessen the impacts on the landscape of the Catani Gardens;*

The greater extent of Pier Road cannot be included in the compound because it needs to be kept clear for the movement of trucks and other construction vehicles. The use of the Sea Bath's carpark was ruled out, in part, because it is structurally inadequate (as discussed in the HIS), and also because the Sea Baths and other businesses operating from the premises have been seriously impacted upon by COVID. It is considered that occupying the Sea Baths carpark for an additional two years during construction of the pier would be entirely unreasonable.

There are also practicalities influencing this decision not to use the carpark as a construction compound. No clear delivery path can be created from the carpark to the pier without expanding the extent of the work zone.

The foreshore to the south of the pier (outside of the extent of registration) is also being utilised as a construction compound but it is not large enough to accommodate the facilities required for such a major infrastructure project. There is no other feasible option but for the construction compound to extend at least part way into the Catani Gardens. It is the optimal location in terms of the construction process – a more remote location for the compound would bring with it inefficiencies and increase costs to the contractor- costs that are passed onto the Government.

Beyond this it should be emphasised that the southern end of the Catani Gardens is not a highly sensitive area. It is one of the least intact parts of the Gardens with substantial modern intrusions to its early landscape character in the form of the concrete pedestrian overpass, the kiosk, and also the realigned Pier Road with attendant loss of lawns and original paths.

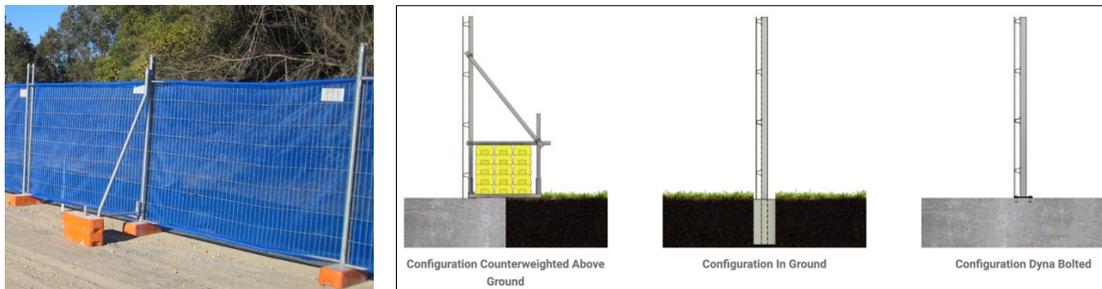
It is a relevant consideration that the proposed temporary compound covers 2305 square metres of registered land, equating to just under 4% of the Catani Gardens (approximately 6 hectares in total). The proposed works will therefore allow for the vast majority of the Gardens to remain open and accessible to the public for the full duration of the St Kilda Pier redevelopment.

- *Details of the fencing/hoarding around the compound and any graphics or images that may be placed on printed wrap fixed to the fence/hoarding as suggested in the HIS.*

It is intended that the outside face of the temporary hoarding will be painted by a local artist. No design has been prepared at this stage, but it can be provided as a condition of permit – ie artwork to be submitted for endorsement by the Executive Director prior to commencement of the works.

The commissioning and preparation of artwork is time consuming process and cannot realistically be undertaken within the timeframe to respond to the RFI, or without causing significant and costly delays to the project as a whole. The circumstances are analogous to a more typical permit application scenario where details of permanent interpretative signage is usually only required as a condition of permit, eg St Jude's Church, Carlton (P23324, condition 10) and the former Petersville Factory Administration Building, Mulgrave (P33586, condition 17).

Aside from the issue of the artwork, the temporary fencing to the proposed construction compound will be of a standard type of approximately 1.8-2.1 metres in height. The typical appearance and fixing details for the temporary fencing are illustrated below.



Indicative images of temporary fencing proposed for the construction compound.

- *Details of the proposed path within the Gardens, beyond the compound.*

The proposed path is to be constructed as per the City of Port Phillip standard detail, a drawing of which is submitted with this letter. Grass and organic material will need to be stripped back to a good substrate, on which is installed 100mm of compacted crushed rock and then a layer of asphalt.

A line-marked asphalt surface is required by the City of Port Phillip for the safe movement of cyclists and pedestrians - this issue is of paramount concern relative the minor (and temporary) visual impact of the asphalt surfaces. It is noted that the new temporary path route has also been designed in close consultation with the City of Port Phillip.

- *An explanation and discussion about there being no proposed re-establishment in the present application of, at the very least, the Gardens to their early 20th century squared off form, along with associated extension of the shortened radial path and of the lawns. Or a proposal to undertake these re-establishment conservation works.*

The application now provides for the reinstatement of the 'squared-off' form of the gardens and extension of the radial path and lawns. This would be carried out in conjunction with upgrades to the Pier Road landscape – outside of the extent of registration and subject to a separate permit application to the City of Port Phillip. The reconstruction of the missing lawns and paths in Catani Gardens could not be included in the permit application as originally lodged because of funding arrangements entirely outside of the control of Parks Victoria.

- *Details of any interpretive proposal in support of the reconstruction of the bluestone seawall.*

As discussed above, details of interpretative materials can reasonably be provided as a condition of permit, as is routinely the case for registered sites, The following wording is suggested for the permit condition:

Site Interpretation

Within one year of the commencement of the works approved by this permit, an interpretation strategy is to be approved in writing by the Executive Director, Heritage Victoria. The interpretation strategy is to be prepared by a suitably qualified interpretation consultant and is to include the content and proposed design of permanent display elements of appropriate information outlining the history and physical development of the St Kilda pier and adjoining foreshore/Catani Gardens.

It is otherwise not entirely clear what further information is required, insofar as the reconstruction of the seawall is a fairly straightforward exercise, whereby lost early fabric is to be reinstated based on clear physical and documentary evidence of its original appearance.

- *An updated HIS that is based on all the additional information and addresses the matters raised in this letter. Please note: to ensure that all matters required under the Heritage Act are addressed and aid the assessment of its content by Heritage Victoria it would be beneficial if the form of the updated HIS were to be consistent with our latest Guidelines for preparing heritage impact statements (including template). The link to this document can be found in the body of this letter.*

The HIS addresses all key matters set out in the current guidelines for preparing heritage impact statements (including the template). The HIS demonstrates a proper understanding of the history and evolution of the Catani Gardens and its identified significance. The HIS also has appropriate regard for the matters that the Executive Director is required to consider in determining permit applications.

Further to this, the format adopted by the HIS is exactly the same as adopted for all such reports prepared by Bryce Raworth Pty Ltd since 2020 when guidelines for preparing heritage impact statement were published by Heritage Victoria. The 2020 template for heritage impact statements is virtually identical to the current version. I would direct you to the example of the HIS provided in support of the successful permit application for works to the former Rupertswood Drill Hall (Permit No. P34729).

Our office has not in the last few years received any RFI's to suggest that the HIS format adopted for the Catani Gardens applicant is in any way deficient.

The HIS does not solely rely on the 2004 Catani Gardens CMP, but has been informed by additional research bringing greater clarity in respect to the provenance of the trees within the proposed compound. I draw your attention again to figure 8 in the HIS demonstrating that all of the Canary Island palms were planted after 1987. The Moreton Bay Figs are even more recent plantings and were not present before 2001. Moreover, the Moreton Bay Figs are not registered items, and do not reflect any historical planting scheme for this part of the gardens, which remained a fairly barren expanse of lawn though most of the twentieth century. That aside, it is again noted that protection measures are to be implemented for all existing trees within the construction compound.

Further to the reliance on the Catani Garden CMP, it should be noted that no substantive changes have been made to the southern end of the Gardens since that document was prepared. No new information has been brought to light affirm that the southern part of gardens have 'evolved' or matured to become more significant than recognised in the CMP.

Regard must be had for the identified significance, as adopted by Heritage Victoria, and whether or not trees and other landscape features are described in the extent of registration.

The HIS addresses the benefit of the St Kilda Pier redevelopment to the Catani Gardens in providing a much-improved setting and enhancing public's appreciation of the foreshore environment as a whole. The pier and gardens are interrelated entities that contribute to the historically and socially significant role of the broader St Kilda foreshore as a place for recreation. There is an appreciable benefit to the Catani Gardens in the upgrades now proposed for the adjacent Pier Road landscape and the opportunity that the works provide for the reinstatement of the areas of lawn and paths lost when Pier Road was rebuilt with a curved alignment.

The City of Port Phillip, being the land managers of Catani Gardens, have been actively engaged in the design of the new St Kilda pier, and are supportive of the proposed outcomes.

Having regard for the above, it is respectfully contended that the determination of the permit is not in any way dependant on the provision of an updated HIS. All information necessary to make the determination is provided in this letter and supporting documentation.

- *A response that addresses the effect on the reasonable or economic use of the registered place if the proposal were to be refused. The link to Heritage Victoria's policy document on this matter can be found in the body of this letter.*

Heritage Victoria's policy document on reasonable or economic use includes the following guidelines on the issue of reasonable use:

13. *The 'reasonable use' consideration is an objective assessment and is concerned with the reasonable use of the registered place or object, not what is subjectively reasonable. For example, refusal to issue a permit for an addition to a residence may affect the reasonable use of the registered place to a lesser extent if the place could generally be used as a residence by others without the proposed changes.*
14. *When taking into account the circumstances of the permit application and the registered place or object, the Executive Director may consider: (1) the historic, recent and current uses of the registered place or object, (2) other compatible uses of the registered place or object, (3) the context and setting within which the place or object is located, and (4) other relevant matters.*
15. *Refusal to issue a permit for works to enable a change in use may affect the reasonable use of a place to a greater extent if the historic or recent use is now obsolete, than if the historic or recent use is not obsolete. For example, an adaptive re-use proposal for a now redundant industrial complex.*
16. *Refusal to issue a permit for upgrading facilities to bring them to contemporary or safe standards may affect the reasonable use of a place. For example, updating kitchens, bathrooms, access provisions or other necessary infrastructure or services required to meet current regulations or legislation.*

The temporary works compound is a reasonable use for the place, being first and foremost a temporary and reversible intervention and secondly, a use that forms an essential component of the redevelopment of St Kilda Pier. This project is directly aligned with the significant use of the St Kilda foreshore (including the Catani Gardens) as place of recreation for the public.

Item 15 is not a relevant consideration in that there is no permanent change of use to the Gardens. With reference to item 16 above, refusal to issue a permit for the temporary compound prevents the upgrading of the pier and foreshore – parts of which are outside of the extent to registration but are nonetheless intrinsically related in use and physical and spatial relationships.

The issue of economic use is concerned with the economic functioning of the registered place. This is not entirely relevant consideration insofar as the registered place is in this instance public parkland. As per Heritage Victoria's policy document, it is sufficient for the Executive Director to take into account *either* reasonable use or economic use in their consideration if factors relevant to only one are present.

- *An updated Arboricultural report that is based on all the additional information and provides assessment of the potential impacts on the trees and how those impacts are to be managed.*

An assessment of the impact of the works and a tree protection guidelines are provided in the October 2021 Arboricultural Report submitted with this letter. It is again noted that the Arboricultural Report has not been fully updated based on the revised compound layout and temporary bike path route, but this does not invalidate the specific recommendations for management and protection of trees.

- *any other information or documents that you consider will support your application - we note that a June 2021 Biodiversity Assessment for St Kilda Pier - Pier Entry Works: St Kilda, Victoria, prepared by ecology & heritage partners, was provided during pre-application discussions but was not submitted with the permit application. Please submit this if you want it considered.*

The biodiversity assessment is submitted for consideration.

Beyond matters raised in the RFI it is noted that in determining whether to approve an application for a permit the Executive Director may consider, inter alia, *any other relevant matter*. It is a relevant matter that the current application is a vital component of a major redevelopment of public infrastructure with a demonstrable community benefit that far outweighs any the risk of damage to a small and already altered part of the Registered place. It is also a relevant consideration that a refusal of permit or adverse conditions that preclude an optimal siting and layout for the construction compound will delay the redevelopment of the St Kilda pier, and this brings with it the potential for the contractor to charge delay costs.

I trust that the above is of assistance in determining the permit application. To the extent that some aspects of the proposed works are not fully resolved, this information can reasonably be provided for endorsement by Heritage Victoria as a condition of permit without any potential for adverse heritage impacts to the Registered place.

Martin Turnor

Bryce Raworth Pty Ltd